

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

KALVIN N. CRAVEN,
Petitioner,

v.

JIM ROBERTSON,
Respondent.

Case No. [20-cv-01933-SI](#)

**ORDER DENYING MOTION TO
AUGMENT RECORD AND
GRANTING EXTENSION OF
TRAVERSE DEADLINE**

Re: Dkt. Nos. 13, 15

Petitioner has filed a motion to augment the record in this habeas action with two cell phone videos and a surveillance video that were admitted in evidence at petitioner's state court criminal trial. Docket No. 13. Respondent filed a response explaining that Respondent did not have access or control of the trial exhibits including the videos and that an order from this court to the Alameda County Superior Court would be necessary to obtain the videos. Docket No. 14. Respondent submitted copies of still photos from the videos, as only still photos had been served on Respondent during the state court appeal. *Id.*

Federal habeas "review under [28 U.S.C.] § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 180-81 (2011). Here, that means that this court must review the same record that the California Court of Appeal reviewed when it adjudicated petitioner's constitutional claims regarding the videos. Exhibits, such as the videos, typically are not part of the record on appeal and the reviewing court instead relies on the description of the evidence in the appellate record; the reviewing court might then include a description of the evidence in its opinion. For example, the cell phone videos were described in the California Court of Appeal opinion as "two short videos downloaded from appellant's cell phone that showed him sitting in a car with a handgun in his lap. The guns in each

1 video were different.” Docket No. 12-3 at 4. “[T]here was no direct evidence that one of the guns
2 possessed by appellant in the cell phone videos was the same gun used in the charged robberies.
3 But such an inference could be drawn.” *Id.* at 5. And the surveillance video was described in the
4 California Court of Appeal opinion as “[s]urveillance video from a security camera located at the
5 Champa Garden restaurant [that] captured the robbers pulling up in a silver Nissan Altima with
6 license plate number 7SIK335, getting out, walking down the sidewalk and then, after being out of
7 sight, fleeing the scene with a number of bags in their hand.” *Id.* at 3. Unless a party shows the
8 state appellate court’s description of physical evidence to be materially inaccurate – which petitioner
9 has not – that is the description this court will use in adjudicating his federal habeas claims. The
10 motion to augment the record with the videos therefore is DENIED. Docket No. 13.

11 Petitioner’s request for an extension of the deadline to file his traverse is GRANTED.
12 Docket No. 15. Petitioner must file and serve his traverse no later than **November 13, 2020**.

13 **IT IS SO ORDERED.**

14 Dated: September 3, 2020



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16 SUSAN ILLSTON
United States District Judge
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